Creasey Company, Inc., and its Division, the Federal Produce Company *and* Chauffeurs, Teamsters and Helpers Local Union No. 215 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 25-CA-15077

29 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 7 July 1983 Administrative Law Judge Phil W. Saunders issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed limited cross-exceptions and a supporting brief. The Respondent and the General Counsel also filed answering briefs.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to adequately notify and bargain with the Union about the effects of the Respondent's closure of its produce division. The judge concluded that the Respondent failed to provide the Union with timely notice of the decision to close its Federal Produce Division and thereby precluded meaningful bargaining on the issue of employees' severance pay. The Respondent contends, inter alia, that it had legitimate business reasons for keeping the decision to close Federal confidential until Federal's last week of operation when it commenced meaningful effects bargaining with the Union. We find merit in the Respondent's contention.

The Respondent distributes various foods and related products to grocery stores and other businesses. Federal, the Respondent's produce division, had been accummulating steadily increasing losses during 1982. The Respondent decided in late September 1982[2] to discontinue the operation of Federal sometime before Thanksgiving.[3] At the time of the decision to close Federal had an inventory of perishable produce valued at $85,000 to $135,000. The Respondent's president and general manager, Wersich, testified that it was common practice for area food distributors to solicit the business of a closing entity's customers by offering low prices. The Respondent decided to keep the decision to close Federal confidential until shortly before it was implemented. It did so because of the perishable nature of the large inventory Federal had to maintain and the possibility of an immediate loss of its customers to other distributors.

In the meantime, the Respondent sought to make arrangements for the sale of Federal's produce business and its remaining inventory when it ceased operations. In early October the Respondent contacted the Castellini Company whose C. L. Frank division was supplying produce to the Respondent's accounts on a primary or secondary basis. The Respondent met with Castellini's president on 12 October and later that day Castellini drafted a proposal for servicing the Respondent's produce program. The proposal included the following provisions: "Inventory Transfer—C.L. Frank to purchase all Creasey produce inventory at cost assuming produce is saleable as quality produce to existing accounts," and "Timing: Service to commence no later than week of November 15, 1982."[4] Wersich testified that he agreed to Castellini's 12 October proposal in a telephone call "sometime between then and the middle of October." The parties anticipated that Federal would close on 12 November.

During the last week in October the Respondent advanced Federal's closing to 5 November. On 1 November the Respondent informed its customers that Federal would be closing on 5 November and that C. L. Frank would be participating in the Respondent's central billing program starting the following week. The Union's business agent, McDonald, was contacted on 1 November by Federal workers who had learned of the closing. McDonald's attempts to reach Wersich on 1 November were unsuccessful. On the morning of 2 November McDonald spoke with Wersich who confirmed that Federal was closing on 5 November.[5] The Respondent met with the Union on 3, 4, 10, and 15 November and 12 December and discussed various closing-related issues. All matters raised by the Union, except for severance pay,[6] were resolved.

[1] In its answering brief the Respondent contends, inter alia, that the General Counsel's cross-exceptions and supporting brief were untimely filed and should not be considered by the Board. In view of our decision to dismiss the complaint and the fact that the General Counsel's cross-exceptions pertain solely to the judge's proposed remedy and Order, we find it unnecessary to pass on the Respondent's contention.

[2] All dates are in 1982.

[3] The complaint does not allege that the Respondent violated the Act by failing to bargain with the Union about the decision to close Federal.

[4] With respect to Federal's rolling equipment the proposal stated that Castellini would commit for at least two 20-foot trucks and would examine all of Federal's equipment for potential purchase.

[5] C. L. Frank purchased Federal's remaining inventory during the latter's last week of operation.

[6] Severance pay was discussed at each bargaining session and the Union submitted three proposals on the subject.

The judge found that the timing of the Respondent's notice of Federal's closing deprived the Union of a significant opportunity to bargain in a meaningful manner. We find that in the circumstances the Respondent provided reasonable notice to the Union and that it fulfilled its obligation to bargain about the effects of its decision to close Federal.

We note the perishable nature of Federal's product, its substantial inventory, and Wersich's uncontroverted testimony regarding competitors' swift efforts to obtain the business of a closing distributor's customers. We find that the Respondent's concerns with the possible immediate loss of its customers and the inability to dispose of its perishable inventory were justified. We also note that, at the time of the Respondent's decision in late September to discontinue Federal's operation, it did not set a specific date for the closure. When the Respondent orally accepted Castellini's 12 October proposal, which was tentative in some respects and contained details to be worked out, the parties anticipated a 12 November closing date. This was not a firm date as it was changed to 5 November during the last week in October. The Respondent notified the Union shortly thereafter.

We further rely on the fact that the Respondent delayed giving notice of Federal's closing not only to the Union, but also to Federal's customers and all but a few top management employees of the Respondent. In light of the circumstances described above, together with the evidence that the Respondent did not treat the Union disparately with respect to notice of the closing, we find that the Respondent's 2 November notice to the Union was reasonable. We further find that the parties engaged in meaningful bargaining concerning the effects of Federal's closure and had reached impasse on the matter of severance pay. Accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

DECISION

STATEMENT OF THE CASE

PHIL W. SAUNDERS, Administrative Judge: Based on a charge filed on November 26, 1982, by Chauffeurs, Teamsters and Helpers Local Union No. 215 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein the Union or Local 215, a complaint was issued on January 26, 1983, against Creasey Company, Inc., and its Division, the Federal Produce Company, herein the Respondent, Company, Creasey and/or Federal, alleging a violation of Section 8(a)(1) and (5) of the Act. The Respondent filed an answer to the complaint denying it had engaged in the alleged matter. Both the General Counsel and the Respondent filed briefs in this matter.[1]

On the entire record in the case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is an Indiana corporation, and at all times material herein, has maintained its principal office and place of business at Evansville, Indiana, where it is engaged in the wholesale sale and distribution of foods and related products.

During the 12-month period ending October 31, 1982, the Respondent purchased and received at its Evansville, Indiana facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Indiana, and during the same period sold and shipped from its Evansville, Indiana facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Indiana.

The Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

It is alleged in the complaint that on an unknown date in 1981, the Respondent decided to discontinue the operations of its Federal Produce Division Federal, which provided perishable foods to the Respondent's customers, and on or about November 5, 1982, the Respondent implemented that decision; and that the Respondent engaged in the acts and conduct described above, without adequate prior notice to the Union and without having afforded the Union a meaningful opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to the effects of such acts and conduct.[2]

The Respondent is a food distributor, and as such supplies food products to grocery stores and other businesses in the Evansville, Indiana area. Prior to 1976, Federal was a separate company which had engaged in the produce business for many years. On November 1, 1976, the Respondent purchased the assets of Federal and then continued to operate Federal under the same name, but as a division of the Respondent. It also appears that the operation of Federal was continued in the same warehouse which had been used by them in prior years, and which warehouse adjoins the property of the Respondent on which the "Creasey" warehouse is located. Upon

[1] Certain errors in the transcript are hereby noted and corrected. The General Counsel's motion to correct the transcript is granted.

[2] It should be noted that there are no allegations in the instant complaint that the Respondent violated the Act by failing to bargain with the Union over the decision to discontinue the operations of Federal.

taking control, the Respondent immediately hired the former employees and also voluntarily recognized the Union as the collective-bargaining agent of such employees—the Union having formerly represented these employees for many years. The Respondent further gave the former Federal employees credit for their seniority acquired in their prior employment, and the Respondent also immediately entered into an agreement with the Union in regard to the bargaining unit of former Federal employees that was practically identical to the agreement which was in existence at that time between the "Creasey" bargaining unit employees and the Union, and which gave the former Federal employees a wage increase and other fringe benefits.[3] Moreover, there was a no bumping clause in the contract with respect to the "Creasey" bargaining unit, but an employee in the "Federal" bargaining unit, who was laid off, had the right of preferential hiring into the Creasey bargaining unit, and the current contract at the time of the discontinuance of the Federal operation, contained such provisions. (See R. Exh. 2.)

Richard Wersich, president and general manager of both the Respondent and Federal, testified that the decision to discontinue the operations of Federal Produce was made in late September 1982, after the receipt of the sixth period financial report on the operations of Federal, and that the reason for the discontinuance was economic as Federal had been losing money for many months and the losses were growing larger.

President Richard Wersich further testified that when the decision was made to discontinue the operations of Federal, the Respondent also decided, for economic and business reasons, that it could not let anyone in the Evansville area know, except for a few top management persons, of this decision until shortly before it was implemented because of the perishable nature of the large inventory of produce it had to maintain in its warehouse.

Wersich also testified that from their experience in the food industry, the Respondent realized that when it became known that the operations of Federal were being discontinued, other competing food distributors in the area would immediately contact the customers of Federal to solicit their business, and these distributors would offer Federal's customers very attractive prices to induce the customers to give them their business and there was a real likelihood that many of the customers would immediately do so—that an inventory in the area of $85,000 to $135,000 of perishable produce was maintained in the Federal warehouse, and the Respondent was very concerned about being unable to sell this perishable produce, thereby sustaining a loss of many thousands of dollars of inventory; Wersich gave testimony on this point.[4]

When Federal was closed on Friday, November 5, 1982, all 21 of its unit employees were terminated, and it appears that the Union had no notice of the impending closure and terminations until November 2, and Federal employees had, in fact, first heard of it only 1 day earlier. Thus employee and union steward Donald Gray heard from an outside salesman that Federal was closing, and he then inquired of a supervisor about the matter who confirmed that it was true. Gray then telephoned union business agent Charles McDonald who had heard nothing about it until Gray called, but McDonald said he would contact President Wersich about the matter. McDonald was also contacted by Federal truckdriver Bobby Phelps who had just returned from his route, during which a customer had told him that Friday, November 5, would be his last day. McDonald, who had serviced Federal's and Creasey's successive collective-bargaining agreements since 1972, informed Phelps that he had heard nothing from the Respondent but would check into it. McDonald then telephoned Wersich, but was told that he was not in and so left a message for Wersich to call him.

On the morning of November 2, 1982, McDonald placed another call and this time was successful in reaching Wersich, and then asked him if it was true that Federal was closing on Friday, November 5, and Wersich replied that it was true, and also told McDonald that he had been telephoning his customers for 2 days, and although McDonald was on his list of persons to be called, he had not as yet gotten down to him.[5]

On November 3, 1982, McDonald, union counsel Sam Morris and steward Donald Gray met at the Respondent's facility with attorney William Statham and Respondent's director of distribution, James Wilkinson. Statham asked what was the purpose of the meeting, and attorney Morris told him he wanted to negotiate the closing of Federal. Statham asked why, and Morris then mentioned topics such as vacations, health and welfare, pensions and severance pay (Wersich was not in attendance although he was present in the building). At this meeting Wilkinson informed the Union that the meat operations would go from Federal to Creasey, and that the Castellini Company of Henderson, Kentucky, and/or C. L. Frank Company, a division of Castellini Company, would probably be handling some of the business and discussed also the billing arrangements. The parties further discussed employee vacations and a list of vacation

[3] As indicated, since November 1, 1976, the Union has represented the employees of Creasey and Federal in separate units and under separate collective-bargaining agreements.

[4] Produce by nature is very perishable. It is the most perishable thing in the food business. We have had for some time a lot of competition coming into the area to take produce business from Creasey Company, the Federal Produce. We knew after we made the decision to close that if we did not keep this thing very very quiet, that we would have, in a matter of days, Beerhaus & Son out of Vincennes, Owens Produce out of Kentucky, here in Louisville; other distributors out of Louisville; Bernard Foods and Vegetables out of St. Louis. They had all, at one time or another, approached our customers on buying produce from them. Okay, and we tried to keep our group of stores on a very competitive basis, which they have to, and we have to keep them united with us. It is very important for us to survive, so, being a practical matter, a very practical matter in doing business, we talked with C. L. Frank Produce Company, because they had been serving our stores all the time. We have been serving our stores, either on a primary basis or on a secondary basis, and work out some arrangements so where they would go to our stores and see if they couldn't get there on a support program with their company. We deemed this very important to keep it very quiet. If I had announced even four weeks or three weeks ahead of time of closing, all of our people, or all of our competitors would have been in Evansville—

[5] The General Counsel wonders how far down McDonald was on the list, and if he had not called Wersich, for the second time, when McDonald would have been contacted. Moreover, previously Wersich had even called McDonald at his home on certain occasions, but not this time.

schedules was given to the Union, and Statham also informed the Union that insurance on the employees would be paid through November 6, 1982, and that pensions would be paid through November 5, 1982. Severance pay was also brought up and the Union asked for 1 week's pay per year of service for each employee.

The same persons, except for Sam Morris, then met again on the following day, November 4, and discussed different topics. Vacation rights of various employees were discussed and such matters were worked out and agreed upon. The Union inquired if all customers would be billed "centrally" and Statham replied that some would and some would not. Severance pay was again brought up and the Union mentioned that various companies in the Evansville area had given such pay when they closed, but the Respondent replied that an "awful lot" of the companies had not given severance pay upon closing, and the parties then engaged in some discussions back and forth along the lines. Attorney Statham also answered some questions as to the status of Federal salesmen, and the hiring rights at Creasey for Federal employees. The meeting was adjourned with the understanding that if the Union had any questions, they would get in touch with attorney Statham.

On November 5, 1982, Morris and McDonald talked to Statham on the telephone and arranged for a meeting later that day providing Wersich attended, since very little had been accomplished at the first two meetings in his absence. However, Statham's secretary subsequently called and canceled this tentative meeting.

The parties again met on November 10, 1982, at which time Morris asked when the decision to close Federal had been made. Werisch replied that it was made when the institutional or food service phase of Federal's business had been discontinued—in late 1981 or during the first quarter of 1982—but Wersich's decision at that time was rescinded by management in the Respondent's home office, and Federal was kept open.[6] At this meeting the parties again talked about severance pay, but nothing was accomplished in respect thereto. Vacation matters as to employees King and Ward were discussed, and the subject of possible deliveries by C. L. Frank Company to Federal customers was also mentioned. McDonald asked whether the Federal employees understood the health and welfare package, and Statham replied that he had told the employees about it. Attorney Morris asked if anything had been done to keep Federal open, and the Company replied it had not been a successful operation and for this reason it was decided to close it, and there had been no subcontracting. Further, there were discussions again on central billing and how it worked, and the sale of Federal's equipment and warehouse was also mentioned with indications that most everything was up for sale. There was also discussion of turkeys which had been left in Federal's warehouse and whether former Federal employees would be used to load them, and this matter was worked out between the parties.

On November 15, 1982, the parties met again and the Union reduced its severance pay request by submitting a written counterproposal which began with 1 week's pay for 2 to 5 years service.[7] The Respondent's representatives then offered to give each Federal employee a Thanksgiving turkey as severance pay—Creasey employees were given a Thanksgiving turkey in 1982 and Federal employees had annually received turkeys as a Thanksgiving gratuity—the union representatives then conferred among themselves, and then made yet another severance pay counterproposal which amounted to one-half of their last counterproposal, but the Company would not accept it. At this meeting on November 15 there were also further discussions on central billing procedures, the fact that accrued vacations payments to Federal employees would cost the Respondent about $25,000, and again it was mentioned that closing of Federal was due to economics and nothing could have been done to keep it open.

It appears that the last meeting between the parties was held on December 12, 1982, but McDonald testified that, although they went over "practically the same things," nothing was accomplished, and there was no mention of any future meetings.

Counsel for the Respondent argues that an impasse was reached between the parties on the subject of severance pay, but points out that all other issues in question were resolved, and at the last meeting on December 12, 1982, neither side requested another meeting, and it should also be noted that although there was a grievance procedure in the collective-bargaining agreement between Federal and the Union, no grievance of any kind was ever filed by either the Union or any employee over the effect of the closing on the bargaining unit employees.

Counsel for the Respondent also points out that, at the time of the closing, the Respondent paid out a total of approximately $25,000 of accrued vacation pay to the bargaining unit employees with each receiving on the average about $1,000 or more, and that during the bargain-

[6] It appears that between September 18 and 30, 1982, at a meeting attended by Wersich and the Respondent's home officials, the final decision was made to close Federal, and to do so before Thanksgiving. C. L. Frank Distributors, Inc. (Frank) had already been selling produce to all of Federal's customers either as a primary or secondary supplier, and during the course of telephone conversations and a meeting between Wersich and officials of Frank and its parent company, the Castellini Company, an agreement was reached whereby Frank would service all of Federal's customers and purchase its inventory if a central billing arrangement could be agreed upon. (See G.C. Exh. 2.)

Initially Wersich testified that it was during the first week of October that he informed officials of Castellini and Frank that Federal would close on November 5, 1982. However, Wersich later testified that it was not until the last of October that he decided to close on November 5, 1982, rather than on November 12—the anticipated date of closure. In any event, as indicated above, Wersich met with Castellini's president on October 12, 1982, and after which the latter reduced to writing the terms of his proposal that Frank service Federal's customers. The service was to begin no later than the week of November 15, with the anticipated date of closure being November 12, and sometime between October 12 and mid-October 1982, Wersich told President Castellini that his proposed agreement was accepted. Accordingly, Frank took over the lease of two of Federal's trucks, and bought all of the produce Federal had during the week of November 1. Later, Frank bought two of Federal's trucks.

[7] See G.C. Exh. 6.

ing sessions the Respondent took the position that it would not pay any severance pay inasmuch as the Federal operation had been losing money for many months, and the employees were each receiving substantial accrued vacation pay upon being laid off. Wersich's testimony on this point is contained, in part, in the following answer:

> As I stated earlier, the produce division had been losing money for months and months and months. We could say years and it grew worse. That was one of our reasons. We felt that we had been underwriting the jobs of these men for a good while from the standpoint of keeping the place open. The second reason was the amount of vacation pay that each one of these men received. It was quite substantial, probably more, much more than the average type situation.

It is further pointed out by the Respondent that during the first bargaining meeting, the Union and the Company agreed that the terminated or laid-off employees of Federal would have the right to be hired before Creasey hired employees from other sources;[8] that in regard to vacations—there was an initial disagreement over the amount of accrued vacation pay to be received by certain employees, but this issue was resolved during the bargaining meetings, and all of the vacation issues were resolved; that in regard to pensions—the collective-bargaining agreement contained a provision in regard thereto, and after some discussion the Union advised the Respondent that it did not want to negotiate over any pension issues inasmuch as the Respondent needed to take this matter up with the Teamsters' Central States; that in regard to health and welfare, the Respondent agreed to pay the insurance premiums for all the bargaining unit employees through November 6, 1982; but that in regard to severance pay the demands of the Union were very high, and even the counterproposal of the Union would have required the Respondent to pay many thousands of dollars to the bargaining unit employees for severance pay, and this, coming on top of accrued vacation pay in the total sum of $25,000, would have been a high expenditure for a business operation that had been losing considerable money for many months. It is pointed out that the Respondent did make an offer of a turkey for each employee, which was a material benefit and not a mere token (between $7 and $8), but the Union refused the offer, and thus, an impasse on this subject was arrived at after several meetings. Moreover, there was no provision in the contract requiring severance pay, and as a result there were no legal requirements of any kind.

In the final argument counsel for the Respondent maintains that there was meaningful and good-faith bargaining between the Respondent and the Union about the effects of the closing inasmuch as the record establishes that there was agreement on every issue the Union wanted to discuss except severance pay, and on this subject the Union's proposal was excessive in view of the high accrued vacation pay agreed to be paid by the Respondent under the terms of the collective-bargaining agreement. Furthermore, there can be no real issue in this case on the question of the timeliness of the notice given by the Respondent to the Union about the closing—this could only be a genuine issue if such bargaining did not take place, but in any event, the Respondent had a genuine economic reason for not giving notice to the Union any earlier than it did, as to have done otherwise would have cost the Respondent thousands of dollars of lost perishable inventory.

[8] See R. Exh. 2—Art. XXXVIII.

Final Conclusions

In *First National Corp. v. NLRB*, 452 U.S. 666 (1981), the Supreme Court, while holding that an employer has no duty to bargain over its decision to close a portion of its business in certain situations, nevertheless, clearly reaffirmed the Board's general rule that an employer is obligated to bargain about the effects of such a decision, and, with particular respect to mandatory bargaining about the effects of a decision to close, the Court stated that the union must be given a "significant opportunity" to bargain in a "meaningful manner and at a meaningful time."

It appears to me that under such guidelines, early notification of the decision to close in the instant case was essential, and quite obviously, as noted by the General Counsel, it is during this period, between notification and effectuation of a decision, that a union can have a "significant opportunity" to engage in "meaningful" discussions with the employees with the employer, and if necessary to have those discussions backed by economic means.

In *Whitehead Brothers Co.*, 263 NLRB 895 (1982), as further pointed out, the administrative law judge found that the employer had arrived at a tentative decision to terminate its trucking operations in mid-October, and then finalized the decision on November 20—the day on which it terminated operations, but the employer did not notify the union of the termination until the union contacted it on or after November 20 in response to calls from employees. The admininstrative law judge, affirmed by the Board, found an 8(a)(5) violation based upon the employer's failure to give prior notice when it had, for all practical purposes, arrived at its decision more than a month before the actual termination, and on its subsequent refusal to bargain.

In *National Car Rental*, 252 NLRB 159 (1980), as also pointed out, the employer sold its truck leasing operation and assigned some of its lease accounts to a purchaser. The employer had spent considerable time considering its options, and in November 1977 began negotiating a sale. Oral agreement was reached with a purchaser on February 16, 1978, and at least some of the employees were notified on February 22, 1978, as was the union, and the employees were then terminated on or about February 25. The Board found no duty to bargain over the decision to sell, but found an 8(a)(5) violation in failure to give timely notice to the union and afford it an opportunity to bargain over the effects. No bargaining sessions were held in that case, and the administrative law judge found that the union had waived its rights by

not specifically requesting bargaining, but in this respect the Board reversed finding that the employer's presenting the union with a fait accompli precluded meaningful bargaining.[9]

In the instant case, the Respondent's final decision to close Federal occurred between September 18 and 30; and by mid-October 1982, Wersich accepted Castellini's (Frank's) offer to buy Federal Produce, take over Federal's customers, and participate in the central billing arrangement. At that time the anticipated closing date was November 12, but it was later changed to November 5. Nevertheless, it was not until November 2, 1982, that the Union was officially notified. As Wersich admitted, the word had already been received by the retailers on November 1, and they, in turn, were informing Federal employees on that day, but it was not until the morning of November 2, when McDonald called Wersich for the second time, just 3 days before the closing of Federal, that the Union was officially notified.

As detailed further by the General Counsel, the Respondent, at the hearing, sought to explain such short notice by claiming that competitors would have immediately called on Federal's customers if the Respondent had announced the closure before it did, but this claim is belied by Wersich's testimony that Castellini's (and/or Frank's) proposal was accepted by mid-October. Also, Wersich admitted that in October Frank had been selling produce to all of Federal's accounts on a secondary or primary basis, and Frank would be there to supply the produce until Federal closed. Wersich admitted that Frank was able to supply produce to Federal's customers during that period, and further that Frank had purchased most of the produce Federal had on hand.

I am in agreement that the net result of the Respondent's failure to provide timely notice was that the Union was denied an opportunity to bargain at a time when there would have been some measure of balanced bargaining power. One of Federal's employees had over 30 years' seniority and six employees had worked for more than 20 years. Clearly, the severance pay issue was of considerable importance, but the timing of the Respondent's announcement precluded any meaningful bargaining on that issue, and as a result the only thing offered by the Company was a turkey to each employee.[10]

In the instant case, the Union had only 3 days' notice before the plant closed, and in reality the Union received a fait accompli which precluded the Union from participating in meaningful bargaining on the effects of the closing and particularly on severance pay and perhaps, as also suggested, on placement of the employees so that the impact of the sudden closing would not have fallen so harshly on them. Although the employees received accrued vacation pay, they were immediately put out of their jobs without even 1 week's notice and realized no severance pay. By the Respondent's failing to give timely notice of its decision, the Union did not have a significant opportunity to bargain in a meaningful manner, and thereby the Respondent violated Section 8(a)(5). The Respondent will be required to bargain on severance pay.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. All truckdrivers, all warehousemen, all perishable employees, all mechanics and maintenance employees and all freezer operators, but excluding all office clerical personnel, all guards and all supervisors as defined in the Act, and all other employees, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.
4. At all times material, the Union has been the exclusive collective-bargaining representative of the employees in the unit described above.
5. By engaging in the conduct described in section III above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and from like or related unlawful conduct, and to bargain, upon request, with the Union concerning severance pay in the termination of unit employees upon the closing of Federal Produce. However, a bargaining order alone is an inadequate remedy because now that Respondent has closed Federal Produce without notice, the employees no longer have any bargaining power, and in order to create an atmosphere in which meaningful bargaining can be assured, some measure of economic strength must be restored to the Union.

Accordingly, I shall order the Respondent to pay its bargaining unit employees amounts at the rates of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision until the occurrence of the earliest of the following events: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing on bargaining unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good

[9] See also *Merryweather Optical Co.*, 240 NLRB 1213 (1979); *Whitehall Packing Co.*, 257 NLRB 193 (1981) and *Penntech Papers, Inc.*, 263 NLRB 264 (1982).

[10] I think it reasonable to assume that no grievances were filed on this matter because the Union and employees selected to register their dissatisfactions through the National Labor Relations Board. It further appears that all agreement (partial or otherwise) reached on layoffs, accrued vacations, health and welfare, and pensions were, for the most part, mandatory obligations which the Company had to recognize under the terms of the bargaining contract between the parties, and in this regard it is noted that two of the benefits were only extended to on or about November 5, the date of the terminations.

faith. In no event shall the sum be less than these employees would have earned for a 2-week period at the rates of their normal wages when last in the Respondent's employ. Interest shall be paid in the manner prescribed in *Florida Steel Corp*, 231 NLRB 651 (1977).[11]

[Recommended Order omitted from publication.]

[11] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).